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No. 449

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE ASSOCIATED PRESS et al.,
Appellants,

v.

EDWIN A. WALKER
Appellee.

On Appeal from the Court of Appeal,
Second Circuit, State of Louisiana

APPELLEE'S MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM

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The Appellee moves the Court to dismiss the appeal herein or in the alternative to affirm the judgment of the Court of Appeal of the Second Circuit of Louisiana on the ground that the appeal does not present a substantial federal question and is precluded by the previous decisions of this Court.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

This appeal raises the question as to whether or not Article 74 of the Louisiana Code of Civil Procedure is violative of the rights of free speech and freedom of the press guaranteed under the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment. The statute in question reads as follows:

> "Art. 74. Action on offense or quasi offense
> An action for the recovery of damages for an offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained."

The facts and the proceedings in the Court below are set forth in pages 7 et seq. of the Appellants' brief. They may be summarized as follows:

The Plaintiff-Appellee brought this suit in the District Court of Caddo Parish, Louisiana, for damages against The Associated Press which has its chief bureau in New Orleans, and The Times-Picayune Publishing Company which publishes The Times-Picayune and The New Orleans States-Item and has its domicile in Orleans Parish. It is alleged that The Associated Press sent out of its New Orleans office news releases to newspapers throughout the State of Louisiana and elsewhere and particularly into Shreveport in Caddo Parish, the forum where this suit has been brought. It is further alleged that The Associated Press supplied news items to The

Times-Picayune Publishing Company, its co-defendant, which contained libellous and untrue statements of which were damaging to the character and reputation of the plaintiff. The venue selected by the plaintiff, being in the parish where the libellous matter was published and distributed, was sustained by the state courts in view of the codal provision permitting such a suit to be brought either in the parish where the wrongful conduct occurred or in the parish where the damages were sustained. Under the allegations of the plaintiff's petition the damages were sustained in Caddo Parish and the plaintiff suffered injuries in that parish.

ARGUMENT

This Court has repeatedly held that the venue of civil actions is a matter within legislative discretion and that the Fourteenth Amendment protects fundamental rights — not the forum which the state may designate for the protection of such rights. See *Bain Peanut Company v. Pinson*, 282 U. S. 499, 75 L. ed. 482; *Cincinnati St. R. Co. v. Snell*, 193 U. S. 30, 48 L. ed. 604-607.

In the case of *Gasquet v. Lapeyre*, 242 U. S. 367, 61 L. ed. 367, this Court refused to review a decision of the Supreme Court of Louisiana in a case involving the constitutionality of that Court's ruling involving the jurisdiction of a state court, saying:

> "And, as our decisions show, there is nothing in the clauses of the 14th Amendment guarantying due process and equal protection which converts an

> issue respecting the jurisdiction of a state court under the Constitution and statutes of the state into anything other than a question of state law, the decision of which by the state court of last resort is binding upon this court."

On at least two occasions applications to this Court were made to review venue statutes in libel suits on the ground that a provision permitting suits in any country or parish where the libel was published violated the 14th Amendment. The Supreme Court refused such application. Applications were sought in two cases from Missouri, one of which is cited in the defendants' brief. These cases are: *Cook v. Globe Printing Company of St. Louis*, 127 SW 332; and *Julian v. K. C. Star Co.*, 107 SW 496. Both of these cases involved a Missouri statute which provided that suits against corporations may be commenced within the county where the cause of action occurs or in any county where the corporation may have an office or agent for the transaction of its business. In the *Cook* case suit was brought in Randolph County at Huntsville, Missouri, although the newspaper, The St. Louis Globe Democrat, was printed in St. Louis and the corporation owning the paper was domiciled there. The Missouri Supreme Court upheld the venue in Randolph County and the newspaper sought writs from the Supreme Court of the United States. The application for writs was denied. See *Globe Printing Co. of St. Louis v. Cook*, 220 U. S. 603, 55 L. ed. 604-5.

The *Julian* case involved a similar question and an application to the Supreme Court of the United States

for writs was made. The writs were denied. See *K. C. Star Co. v. Julian*, 215 U. S. 589, 54 L. ed. 340.

There is nothing in the Louisiana statute which restricts the right of the defendants to publish news concerning any person in public life where the publications are based on true facts and are not done maliciously to injure the reputation of the person involved. No newspaper has any right to publish scurrilous and untrue remarks about any person and with immunity from legal process. Libel and slander are not only civil offenses but are criminal under the law. Defendants and Appellants have suggested no reason why they might choose the forum where they will defend such acts.

Freedom of speech is freedom to tell the truth and comment fairly on facts, and not a license to spread damaging falsehoods in the guise of news gathering and dissemination. See *Sweeney v. Schenectady Union Publishing Company*, 122 F. 2d. 288, Aff. 316 U. S. 642, 86 L. ed. 1727; *Beauharnais v. Illinois*, 343 U. S. 266, 96 L. ed. 919, 932; *Roth v. U. S.*, 354 U. S. 476, 483, 1 L. ed. 2d 1498, 1506; *Robertson v. Baldwin*, 165 U. S. 281, 41 L. ed. 715.

CONCLUSION

It is respectfully submitted that the Appellants present no substantial question for the decision of this Court and that the questions presented have already

been decided and have been foreclosed by the previous decisions of this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am a member of the bar of the Supreme Court of the United States and that on the ..... day of September, 1964, I served a copy of the above and foregoing Motion to Dismiss and Alternative Motion to Affirm together with supporting brief on the defendants, The Associated Press and The Times-Picayune Publishing Company, by mailing copies of the same properly addressed and postage prepaid to their attorneys of record in this cause.

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Attorney for EDWIN A. WALKER,
Appellee